



State of Utah  
DEPARTMENT OF COMMERCE  
DIVISION OF SECURITIES

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April 10, 1997

William D. Peterson, House Counsel  
Capital Funding and Financial Group, Inc., and  
kidZtime TV  
10125 West 6th Avenue  
Lakewood, CO 80215

Re: Capital Funding and Financial Group, Inc., and kidZtime TV  
File # 005-7471-47/A58753-50

Dear Mr. Peterson:

The Division of Securities ("Division") is responding to your letter dated February 3, 1997, requesting a No-action Letter pursuant to § R164-25-5 of the Utah Administrative Code ("UAC") and § 61-1-25 of the Utah Uniform Securities Act ("Act") on behalf of Capital Funding and Financial Group, Inc. and kidZtime TV ("Capital Funding and kidZtime"). At your request, the Division has considered the factual representations made in your October 25, 1996, and January 8, 1997, letters with their enclosures.

Based on the facts presented, the staff of the Division will not recommend enforcement or administrative action should Capital Funding and kidZtime offer or sell its partnership interests in Utah.

This response does not express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the position of the Division staff on enforcement or other administrative actions.

Inasmuch as the recommendation is based upon the representations made to the Division, it should be noted that any different facts or conditions of a material nature might require a different conclusion. Furthermore, this no-action letter relates only to the referenced general partnership and shall have no value for future similar general partnership offerings and does not absolve any party involved from complying with the anti-fraud provision contained in § 61-1-1 of the Act.

Very truly yours,

MARK J. GRIFFIN, DIRECTOR  
UTAH DIVISION OF SECURITIES

S. Anthony Taggart  
Assistant Director

SAT/agb



February 3, 1997

VIA FEDERAL EXPRESS

A. Gary Bowen  
Corporate Finance Examiner  
Department of Commerce  
Division of Securities  
160 E. 300 South  
P.O. Box 146760  
Salt Lake City, Utah 84114-6760

RE: Capital Funding & Financial Group and kidZtime TV

Dear Mr. Bowen:

This letter follows Mr. Taggart's letter of January 21, 1997 confirming the Division of Securities (the "Division") has no further questions at this time; and, my request for a "no-action letter".

Pursuant to Division Rule, § 164-25-5(A)(3), Capital Funding requests the Division to issue a "no-action" letter.

I note pursuant to Division Rule § 164-25-5(C)(2), the Division may not issue a no-action letter with respect to "transactions which have already taken place". This request takes into consideration that provision; the requested no-action letter is based on Capital Funding's future continued offer or sale of partnership interests in Utah based on the same described set of facts set forth in the information previously submitted to the Division. Pursuant to the sub-sections of Division Rule § 164-25-5(B), Capital Funding submits the following:

(1): Enclosed are two written copies of this request for a no-action letter.

(2)(a): The statutory and Rule sections to which the request pertains are those set forth in the Division's letter of September 27, 1996, specifically the Utah Uniform Securities Act, (the "Act"), § 61-1-7, regarding the offering and sale of "securities" in Utah, § 61-1-14 regarding exemptions under the Act, and §§ 61-1-3 and 61-1-4 of the Act regarding the licensing of broker dealers.

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(2)(b): The factual representations submitted by Capital Funding with respect to the relevant aspects of the proposed transactions, events and circumstances are those set forth in Capital Funding's letters of October 25, 1996 and January 8, 1997, and the enclosures therewith.

(2)(c): The legal principles relevant to this request for a No-action letter are cited in Capital Funding's letter of October 25, 1996, specifically the cases referenced at page 2, *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946), affirmed by *Goodwin v. Elkins & Co.*, 730 F.2d 99 (3rd Cir.), cert. denied, 469 U.S. 831 (1984), and *Banghart v. Hollywood General Partnership*, 902 F.2d 805, 807-808 (10th Cir. 1990). These cases, and others, hold the sale of partnership interests are not the sale of a security.

(2)(d): Capital Funding is requesting a no-action letter because the Division's requests for information were followed by the determinations to seek no further information and Capital Funding may sell partnership interests to Utah residents.

(2)(e): Capital Funding has advised the Division of other "legal action, judicial or administrative, which relates, directly or indirectly, to the facts set forth".


(2)(f): The "transactions in question" were commenced, as disclosed to the Division. The transactions were suspended after receipt of the Division's September 27, 1996 letter, which suspension continued until after receipt of the Division's January 21, 1997 letter.

(2)(g): Enclosed is the filing fee of \$120.00.

Please advise if any further information or submissions are required prior to issuance of a no-action letter. Thank you for your courtesies and considerations.

Sincerely,

Capital Funding & Financial Group, Inc.

  
William D. Peterson  
House Counsel

Enclosure: As stated

WDP:rlc